86-62

No. 85-____

Supreme Court, U.S.
FILED
JUN 30 1986
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1985

J. JEROME PREVATTE, INDIVIDUALLY AND WACO FINANCIAL, INC.,

Petitioners,

V

SECURITIES AND EXCHANGE COMMISSION, ITS AGENTS AND EMPLOYEES; ET AL.,

Respondents.

RESPONDENT, KENNETH MILLER'S, BRIEF IN OPPOSITION TO PETITIONER'S REQUEST AND PETITION FOR WRIT OF CERTIORARI

William J. Heaphy P14799
Counsel for Kenneth Miller
555 Grand Plaza Place
220 Lyon Square
Grand Rapids, MI 49503
(616) 458-4880

COCKLE LAW BRIEF PRINTING CO., (800) 228-8845 (tone) 75
or call collect (402) 342-2831

QUESTIONS PRESENTED

I. Petitioner has failed to present this Court with an issue or question necessitating a United States Supreme Court hearing as described in Federal Rules of Civil Procedure, Supreme Court 17.

II. Petitioner has neglected to abide by the procedural requirements for filing a writ of certiorari as described in Federal Rules of Civil Procedure, Supreme Court 21.

III. This Petition is merely a frivolous unwarranted claim filed by Mr. Prevatte to aid in his private vendetta against respondents. As such, respondent, Kenneth Miller, requests an award of damages pursuant to Federal Rules of Civil Procedure, 49(2).

IV. This Petition must fail as to WACO Financial, Inc., the corporation, as Jerome Prevatte, who is not a licensed attorney, may not properly represent the corporate entity of WACO Financial, Inc.

PARTIES

J. Jerome Prevatte, Individually and WACO Financial, Inc., Petitioners

v

Securities and Exchange Commission, John Shad, William Goldsbery, Frank Lash, Mary Weiss, William Gaynor, Frank Rothing, John Kuhn, David Brown and Kenneth Miller, Respondents.

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CITATIONS TO LOWER COURT OPINIONS

1) *J. Jerome Prevatte & WACO Financial, Inc. v SEC,* et al, No. 85-1521, US APP Ct (6th Cir.) April 2, 1986

2) *J. Jerome Prevatte & WACO Financial, Inc., v NASD/ SEC,* 513 F. Supp 758 (W.D. Mich 1981)

3) *J. Jerome Prevatte & WACO Financial, Inc., v SEC,* 81-82 F.2d L. REP (CCH) ¶98, 220 (6th Cir., July 9, 1981)

4) *SEC v WACO Financial, Inc.,* 518 F. Supp 651 (1981)

5) *SEC v WACO Financial, Inc.,* 751 F.2d 831 (6th Cir. 1985), *cert denied* 106 SC 65 (1985)

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STATEMENT OF JURISDICTIONAL GROUNDS

United States Supreme Court may review an appellate Court decision concerning a civil dispute via a writ of certiorari pursuant to 28 U.S.C.A. Section 1254. This statute reads:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
>
> (2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

Thus, this Court has the authority to review the present petition. Although jurisdictional basis exists, such jurisdiction is discretionary in nature. For the reasons set forth herein, respondent, Kenneth V. Miller, requests this Honorable Court to deny petitioner's writ of certiorari and grant respondent, Kenneth V. Miller, expenses and attorney's fees pursuant to Federal Rule Civil Procedure 49(2).

CITATION TO PERTINENT SECTIONS OF CONSTITUTIONAL PROVISIONS, STATUTES, and REGULATIONS

Fed. R. Civ. P. 17:

1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

Fed. R. Civ. P. 21:

1. The petition for writ of certiorari shall contain, in the order here indicated:

(a) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of the questions should be short and concise and should not be argumentative or repetitious. The statement of a question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition or fairly included therein will be considered by the Court.

(d) A reference to the official and unofficial reports of any opinions delivered in the courts or administrative agency below.

(e) A concise statement of the grounds on which the jurisdiction of this Court is invoked showing:

(i) The date of the judgment or decree sought to be reviewed, and the time of its entry;

(iv) The statutory provision believed to confer on this Court jurisdiction to review the judgment or decree in question by writ of certiorari.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations which the case involves, setting them out verbatim, and giving the appropriate citation therefor. If the provisions involved are lengthy, their citation alone will suffice at this point, and their pertinent text then shall be set forth in the appendix referred to in subparagraph 1(k) of this Rule.

(g) A concise statement of the case containing the facts material to the consideration of the questions presented.

(i) If review of the judgment of a federal court is sought, the statement of the case shall also show the basis for federal jurisdiction in the court of first instance.

Fed. R. Civ. P. 46(3):

3. While making due allowance for any case presented under this Rule by a person appearing pro se, the Clerk will refuse to receive any document sought to be filed that does not comply with the substance of these Rules.

Fed. R. Civ. P. 49(2):

2. When an appeal or petition for writ of certiorari is frivolous, the Court may award the appellee or the respondent appropriate damages.

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STATEMENT OF CASE

J. Jerome Prevatte, petitioner, is the president and major stockholder of WACO Financial, Inc. (WACO), a securities firm that was a member of the National Association of Securities Brokers and Dealers registered with the Securities and Exchange Commission (SEC). NASD is a direct branch of the SEC to provide a self regulating system for securities dealers. 14 U.S.C., Section 78o, requires NASD to govern brokers conduct and enforce compliance with the national standards and principles. Thus, NASD conducts adjudicative hearings for members accused of violating SEC rules and dispensing any appropriate disciplinary action and penalties.

There is a vast appellate system embodied within the disciplinary process with avenues to both the judiciary and administrative levels for an aggravated member. The initial disciplinary hearing occurs in a body known as the NASD District Business Conduct Committee; and action may be appealed to the Board of Governors, then on to the SEC, with final appeal in the U.S. Court of Appeals. 15 U.S.C. Section 78y(a).

Petitioner found himself involved in a series of district disciplinary hearings (NO. CHI-654 on March 27, 1980, NO. CHI-659 on August 1, 1980, NO. CHI-665 on December 5, 1980), for alleged violations of NASD rules (A.2). These hearings concluded that Prevatte violated numerous regulations and, therefore, petitioner was expelled from NASD and forbidden to act in a principle capacity with any NASD member (A.10).

Prevatte promptly appealed to the Board of Governors and followed the appellate route as each decision on

every level of the tier was upheld (A.12). Additionally, petitioner brought suit in the United States District Court for the Western District of Michigan seeking to enjoin NASD and the SEC from imposing sanctions against WACO pending his appeal. *WACO Financial, Inc. v NASD*, 513 F. Supp 758 (W.D. Mich 1981). The Court dismissed the complaint on April 24, 1981 due to Prevatte's failure to exhaust the administrative remedies available. In response, petitioner submitted a mandamus petition for a stay of the SEC sanctions to the Sixth Circuit Court of Appeals. The appellate tribunal also dismissed the request for failure to exhaust administrative remedies. *WACO Financial, Inc. v SEC*, 81-82 F. 2d. L. REP. (CCH) ¶ 98, 220 (6th Cir., July 9, 1981).

On July 30, 1981, the SEC dismissed petitioner's pending appeal concerning the disciplinary hearings for the first first and second complaint since Prevatte and WACO neglected to submit a brief as required (A.12). Although petitioner had a right to appeal this ruling pursuant to 15 U.S.C. Section 78y, Prevatte did not take any action. Simultaneously, the Securities and Exchange Commission filed suit in the Western District Federal Court to enjoin petitioners from operating as a broker in violation of SEC regulations. The Court entered a permanent injunction against Prevatte in *SEC v WACO Financial, Inc.*, 518 F. Supp 651 (1981), affirmed *SEC v WACO Financial, Inc.*, 751 F.2d 831 (6th Cir. 1985), *cert* denied, 54 U.S. LW 3223 (1985). Petitioner counter attacked this tactic by filing suit in the Kalamazoo Circuit Court against Respondent, Kenneth Miller, Circuit Court for Kalamazoo County, NO. D85-2743-NM (Judge Borsos), as well as initiating an ad-

ditional action in the Federal District Court, *J. Jerome Prevatte v NASD, et al,* NO. K86-116 CA4.

Undaunted, petitioner now requests this Court to overturn the Sixth Circuit Appellate Court decision and order an entry for new trial. This tangled web of litigation thrust and parry has merely clogged a saturated judicial machine. The Courts must efficiently utilize their precious time to adjudicate genuine actions. Yet, petitioner insists in pursuing his interests by submitting a writ of certiorari that fails to meet the requisite jurisdictional requirements and contains multitudes of procedural errors.

Further, Mr. Prevatte, who is not a lawyer, presumes he may represent the corporate entity, WACO Financial, Inc., in pro se. Although an individual's right to represent himself is not disputed, a person who is not a licensed attorney may not act as legal representative for a corporation.

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SUMMARY OF ARGUMENT

Petitioners' writ of certiorari is inadequate in numerout instances and therefore, the petition for Supreme Court reviewal should be denied.

The basic requirement for the United States Supreme Court to review an appellate tribunal decision is an authorized jurisdictional foundation. Jurisdiction may be invoked via petition for writ of certiorari. However, such jurisdiction is triggered only in circumstances where federal questions have been decided in conflicting manners by federal appellate courts and/or state courts of the last re-

sort, resulting in discrepancies and confusion within the federal law. Fed. R. Civ. P. 17. Petitioner, however, is merely advocating an 'unfair decision and trial' because he disagrees with the courts' rulings. Mr. Prevatte and WACO seem to disregard the necessity for approaching this court with a legitimate question and issue to review. Thus, respondent, Kenneth V. Miller, contends this petition should be denied for lack of a proper question of law and appropriate jurisdictional basis.

Petitioners have failed to abide by the procedural requirements for filing a writ of certiorari cited in Federal Rule Civil Procedure 21. This writ contains six distinct procedural errors. Petitioners have neglected to provide:

(1) a reference to the official and unofficial reports and opinions delivered in a lower court or administrative agencies;

(2) a concise statement specifying the grounds for Supreme Court jurisdiction including the judgment or decree sought to be reviewed accompanied by its date of entry;

(3) a cite to the constitutional provisions, treaties, statutes, regulations, and ordinances which the case involves, *setting them out verbatim*;

(4) a *succinct*, factual statement of this action;

(5) an indication of the jurisdictional basis in the court of the first instance; and

(6) a clear, definite and complete disclosure of the issues in controversy.

Petitioner made a cursory attempt to comply with certain aspects of Fed. R. Civ. P. 21, while other requirements are avoided completely. Actually, it is impossible for petitioners to abide by Fed. R. Civ. P. 21(i) because

the Federal District Court, the tribunal is the first instance, determined it did *not* have jurisdiction to adjudicate Prevatte's claims. A number of subsections within this statute have been addressed similarly.

Mr. Prevatte, however, maintains that the claim on behalf of himself and WACO should survive. He hints he has been abused by the judicial system simply by proceeding as an in pro se litigant. Prevatte's arguments must fail for two reasons. First, Jerome Prevatte is acting as a legal representative for WACO Financial, Inc. However, it is a settled legal principle that an individual who is not a licensed attorney may not appear on behalf of a corporation, despite his/her capacity as an officer of such company. An individual has a constitutional right to represent himself in an action. However, this right does not authorize or entitle the person to act on behalf of the corporate entity. As such, these proceedings are a nullity as to the corporation, WACO Financial, Inc. Therefore, this petition does not reflect a properly asserted cause for WACO Financial, Inc.

Second, federal statutes and regulations acknowledge one's right to assert an action in pro se. However, the pro se litigant, as all parties, must abide by the procedural statutes. While due allowance will be made for any case presented by an individual in pro se, the petition for writ of certiorari will be refused that does not comply with the substance of the federal Supreme Court procedural rules. Fed. R. Civ. P. 46(3). Petitioner's writ embodies six procedural errors; certain subsections of the rules are impossible to meet. Such mistakes extend beyond minor and technical violations. Petitioner has not complied with the necessary procedures and, therefore, respondent, Kenneth

V. Miller, contends this writ of certiorari should be denied.

Finally, Federal Rule Civil Procedure 21.5 states, "the failure of petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be sufficient reason for denying his petition." The writ is a lengthy, redundant debate attempting to procure a decision in Mr. Prevatte's favor. Petitioner's document represents the opposite spectrum of 'clearness and brevity'.

Further, this petition is coupled by four additional lawsuits pending in various tribunals; each action is filed against these respondents based on the disciplinary proceedings taken by the NASD/SEC against Mr. Prevatte in 1980 and 1981. The writ is an unnecessary, unwarranted claim filed to harass and aggravate respondents. Federal Rule Civil Procedure 49(2) was drafted specifically to deter meritless actions, such as the case at bar. This statute authorizes the Court to award damages when a frivolous writ is submitted. Prevatte is clearly utilizing the court system to punish and abuse respondents. Therefore, respondent, Kenneth V. Miller, requests this court to award him damages for expenses and attorney fees incurred in defending these actions, pursuant to Federal Rule Civil Procedure 49(2).

WHEREFORE, respondent, Kenneth V. Miller, respectfully requests this Honorable Court to deny this petition for writ of certiorari and grant respondent, Kenneth V. Miller, his expenses and attorney's fees for defending these actions pursuant to Federal Rule Civil Procedure 49(2).

ARGUMENT

The highest court in the land has the authority to review appellate court decisions via a writ of certiorari in civil matters. Title 28 USCA § 1254. However, whether an appeal is granted is optional. "A review on writ of certiorari is not a matter of right, but of judicial discretion." Fed. R. Civ. P., SCT, 17. This mode of invoking the United States Supreme Court's appellate jurisdiction is utilized only where there are special and important reasons therefore. *Fay v Noia*, NY 1963, 83 SCT 822, 372 US 391.

Fed. R. Civ. P. 17 indicates the character of questions that this Court will consider. Such issues are:

1. When a federal court of appeals has rendered a conflicting decision with an equivalent federal court or state court of the last resort on the same matter;
2. When a federal court ruling on a federal question conflicts with a determination issued by the state court of last resort, or, such federal decision greatly exceeds the accepted course of judicial proceedings;
3. When a state court of last resort rules on a federal question that conflicts with decisions made by equivalent sister-state courts or federal court of appeals on the same matter; and
4. When a state or federal court of appeals determines an important federal question of law which has not been addressed, but should be, by the United States Supreme Court.

This Petition supplies the Court with a litany of wrongs committed by the Securities and Exchange Com-

mission and inferior courts, and requests this Court to relitigate the original hearing. Petitioner neglects to present an issue wherein the Sixth Circuit Court of Appeals has delivered a conflicting decision with the state court of last resort or equivalent federal court, or alternatively, made a determination on an unsettled issue of federal law. Further, this appeal does not pose a substantial and special dilemma mandating supreme court scrutiny. "Special and important reasons" relate to problems beyond the academic or episodic, especially where the issues involved reach constitutional dimensions. *Rice v Sioux City Memorial Park Cemetery,* Iowa 1955, 75 SCT 614. 349 US 70. To constitute a question in this catagory, the issue must be a critical discrepancy in an unsettled, acute area of the law. Certiorari should not be granted except in cases involving principals whose resolution are crucial to the public, as distinguished from that of the parties, and in instances where a real and embarrassing conflict of opinions exist between court of appeals. *Rice v Sioux City Memorial Park Cemetery,* Supra. There is not any urgency or eminent authority struggle embodied in the case at bar. This writ lacks any constitutional concern that exceeds the inferior court's authority or ability to settle.

The Petitioner inquires whether:

> "There is a right to be free from the Securities and Exchange Commission bad faith prosecution; res judicata may be the basis for dismissal where it was not raised as an affirmative defense; administrative proceedings are subject to res judicata; the District Court has jurisdiction over improper conduct of its officers; the inferior court may properly make a determination that the intent of the parties cause of action is, other than that actually intended; and the

> Judge may properly adjudicate the action which involves allegations of attorney malfeasance when that Judge has a pro se malpractice action pending against him''. Prevatte Writ of Certiorari, Questions Presented, one through six.

Each problem enumerated has been properly and adequately addressed by the Federal Judiciary System. Also, such issues involve settled regulations and legal principles. Mr. Prevatte is merely attempting, yet again, to compel the judicial system to produce a verdict that meets his approval. Simply, Petitioner has failed to present an issue worthy of this Court's attention.

PETITIONERS HAVE FAILED TO MEET THE PROCEDURAL REQUIREMENTS FOR FILING A WRIT OF CERTIORARI PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 21.

Fed. R. Civ. P. 21 specifically lists the procedure a moving party must comply with to petition the Supreme Court for a writ of certiorari. The code states in Section (d) that a reference to official and unofficial reports of any opinions delivered in the courts or administrative agencies be incorporated into the writ. Petitioner does inform the Court that he was heard before a Western Michigan District Court and the Sixth Circuit Court of Appeals, however, he neglects to disclose the inferior Court's decisions. Rather, Mr. Prevatte authors a mini-argument of the alleged errors of each bench. As such, Petitioner has failed to comply with Federal Rules of Procedure 21 (d).

A moving party is directed to provide a concise capsulate providing the grounds for Supreme Court juris-

diction. Fed. R. Civ. P. 21 (e). This statement shall contain:

1. The judgment or decree date sought to be reviewed and the time of its entry; and
2. The statutory provision conferring jurisdiction on the Court.

Petitioner has a section in his writ entitled "Jurisdiction" that fills six (6) pages without specifying any judgment date. Respondent, Kenneth Miller, assumes from pages two and three of the writ, Petitioner is claiming error resulted from the Court Decisions, in conjunction with, proposing wrongful conduct was prevalent in the initial Securities and Exchange Commission disciplinary hearings. However, the judgment or decree of each decision is absent, as well as, their time of entry. Therefore, Petitioner has failed to comply with Fed. R. Civ. P. 21 (e).

Court Rule 21 (f) requires "the constitutional provisions, treaties, statutes, ordinances, and regulations which the case involves, *setting them out verbatim,* and giving the appropriate citation therefor" to be incorporated into the petition. This writ is littered with case law supporting the principals of "fundamental fairness" and the right to "due process of law". However, Petitioner has neglected to present and illuminate any regulation or constitutional provision providing the basis of this appeal. Thus, the docket also lacks verbatim language and accompanying citations of such phantom provisions. Perhaps the Court is to ascertain the statutory foundation from the pleadings in total. Clearly, Petitioner has not complied with the commands of Fed. R. Civ. P. 21 (f).

Section (g) of this Court rule demands a concise, factual statement of the action. The Code is requesting a succinct history of the dispute. Petitioner, however, has failed to supply the Court with the chain of events that produced this writ. Rather, he provides a verbose, rambling decription of various alleged wrongs against particular parties and attempts to argue his position within the detailed account. This prolix composition is far from a concise reiteration of the facts. Therefore, Petitioner has failed to abide by Fed. R. Civ. P. 21 (g).

Any writ of certiorari requesting review of a federal court judgment shall include into the statement of the case the basis for federal jurisdiction in the Court of first instance. Fed. R. Civ. P. 21 (i). A moving party must delineate to the Supreme Court the original source of federal jurisdiction. Petitioner ignores this dictum completely. Mr. Prevatte has not even made a cursory attempt to adhere to Fed. R. Civ. P. 21 (i). Perhaps Petitioner must disregard this requirement since the U.S. District Court determined in *WACO Financial, Inc. & Jerome Prevatte v NASD,* 513 F. Supp. 758 (1981) that it did not have the jurisdictional basis to adjudicate such action. The proper avenue available for WACO and Prevatte to assert their claims was before the Securities and Exchange Commission, rather than skirting the administrative process. Thus, the Court of first instance did not have the requisite jurisdictional foundation. Mr. Prevatte does not acknowledge this necessity. Throughout the narrative, such jurisdiction is simply not addressed. Thus, Petitioner is unable to comply with Fed. R. Civ. P. 21 (i).

The high court must have a succinct and concise writ to adequately determine whether it will grant reviewal of an appeal. "A petition to the United States Supreme Court for writ of certiorari shall make a *clear, definite* and *complete* disclosure concerning the controversy, since it is impossible for the Court to critically examine the record before ruling on the application, and it must rely largely on preliminary papers". (emphasis added) *Southern Power Company v North Carolina Public Service Company,* NC 1924, 44 SCT 164, 263 US 508. Further, Fed. R. Civ. P. 21 1(a) requires the questions presented for review to be "short and concise and should not be argumentative or repetitious". Petitioner, however, presents a lengthy, redundant debate as the questions presented. Writs of this nature have been rejected due to their lack of clarity. A petition will be denied when it contains no summary, short statement, or general reasons relied on for its allowance, though the record contains one thousand pages. *Galveston Causeway Construction Company v Galveston, H & S.A. Company,* TX 1923, 43 SCT 503, 262 US 747. As such, petitions for writs of certiorari will be accepted contingent upon their clarity and content.

Petitioner's writ, however, is a windy account of alleged wrongs absent any supportive legal authority. The questions, statement of the case, and authorized jurisdiction sections merge and mingle into a litany of claimed errors. The writ is confusing, at best, forcing this Court to sift through arguments, redundant diction, and factual assertions to ascertain the foundation of this petition. Therefore, respondent, Kenneth Miller, respectfully requests this Honorable Court to deny certiorari on the basis that Petitioner has failed to comply with the pro-

cedural regulations gc /erning the manner to invoke United States Supreme Court jurisdiction.

A REQUEST FOR WRIT OF CERTIORARI MAY BE DENIED ALTHOUGH FILED VIA A PRO SE LITIGANT, WHEN SUCH PETITION DOES NOT COMPLY WITH THE SUPREME COURT FEDERAL RULES OF CIVIL PROCEDURE.

An individual's right to represent one's self in a legal dispute is recognized and addressed via statutes and the Federal Rules of Civil Procedure. Naturally, persons who are not trained in the legal profession will not be well versed in procedural requirements. Nevertheless, while due allowance will be made for any case presented under this rule by an individual appearing pro se, the clerk will refuse to receive any document sought to be filed that does not comply with the substance of these rules. Fed. R. Civ. P. 46(3). Petitioner's writ contains seven distinct procedural errors, in addition to its total lack of jurisdictional foundation. Such solecisms are more than minor technical violations. The basis to invoke Supreme Court jurisdiction surely addresses the root and substance of these rules.

This Court has not hesitated to deny certiorari in comparable instances. In *Atkins v E. I. DuPont DeNemours and Company*, OKL 1948, 69 SCT 85, 335 US 331, the Court ruled that it was not required to grant appeal in forma pauperis or pro se, if the movant wrongfully persists in including masses of plainly irrelevant issues in the appeal record. Further, the Court has the duty and power to protect the public from financing wholly unnecessary matters and appeals. *Atkins v E. I.*

DuPont, Supra. Petitioner has four additional lawsuits pending before various tribunals; each action is filed against these respondents based on the disciplinary proceedings taken by the NASD/SEC against Mr. Prevatte in 1980 and 1981. Although to date Petitioner has failed to succeed in his crusade to overturn the rulings of the original disciplinary hearings, respondents must bear the financial burden of defending such a meritless venture. Petitioner persists in filing voluminous pleadings in pursuit of his personal vendetta simply to harass respondents.

Fed. R. Civ. P. 49(2) specifically states that when an appeal or petition for writ of certiorari is frivolous, the Court may award the respondents appropriate damages. This is a necessary regulation to discourage insignificant, trivial, and unwarranted actions. The only way to dissuade frivolous appeals and writs is by the use of the power to award damages. The rule will be enforced in proper cases, both according to its title and spirit. Parties should not be subject to petitions and delays without reasonable cause, and the power to compensate for an unwarranted delay or claim ought not be overlooked. *Whitney v Cook*, MISS 1879, 99 US 607; *Jenkins v Banning*, WIS 1860, 64 US 455. A damage award may be the only effective method of preventing Petitioner from progressing all his actions to the present stage.

Petitioner has had the ample opportunity before the NASD Board of Governors, the Securities and Exchange Commission, the Federal District Court, the Western Michigan Circuit Court, and the Sixth Circuit Federal Court of Appeals to present his arguments before a fair tribunal. This history illustrates that Mr. Prevatte has

transformed the legal system into a weapon to abuse and harass respondents. As such, respondent, Kenneth Miller, requests this Court to implement Federal Rule of Civil Procedure 49(2) and award damages to respondent, Kenneth Miller, for expenses occurred in defending these actions, as well as, attorney's fees.

J. JEROME PREVATTE IS NOT A LICENSED ATTORNEY, THUS, HE HAS NO LEGAL STATUS TO REPRESENT A CORPORATION IN PRO SE. THEREFORE, THIS PLEADING FILED ON BEHALF OF WACO FINANCIAL, INC. IS A NULLITY.

There are two petitioners in this proceeding; J. Jerome Prevatte, Individually, and WACO Financial, Inc. The writ which has been filed seeks relief on behalf of both petitioners. J. Jerome Prevatte has sought to present the claims of both parties on an in pro se basis. While an individual has a constitutional right to appear in a court of law and represent himself in asserting a claim which belongs to him, such individual has no right to represent another in the practice of law unless that individual is a licensed attorney. MSA 27A.901.

The practice of law has been held to include more than appearance in court, and specifically encompasses the preparation of pleadings. *Grand Rapids Bar Association v Denkema,* 290 Mich 56 (1939).

In *Ginger v Cohn,* 426 F. 2nd 1385 (1970), the U.S. Court of Appeals, Sixth Circuit, in applying Michigan law, held that an individual not licensed to practice law may not represent a corporation despite his capacity as an officer of such corporation. The corporate officer in

Ginger was a disbarred attorney. The Court specifically held:

> "An officer of a corporation, who is not a licensed attorney, is not authorized to make an appearance in this Court on behalf of the corporation. Ann., 157 ALR 284."

J. Jerome Prevatte claims that he is the "alter ego" of WACO Financial, Inc. Nevertheless, he is not an attorney at law and he has no legal status to represent a corporation in this Court. The pleadings purportedly filed on behalf of WACO Financial, Inc., are a nullity and this Court should determine that no proper case has been asserted.

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CONCLUSION

WHEREFORE, respondent, Kenneth Miller, respectfully requests this Honorable Court to deny the Petition for Writ of Certiorari and award respondent, Kenneth Miller, damages of expenses and attorney's fees pursuant to Federal Rules of Civil Procedure 49(2).

Respectfully submitted,

/s/ William J. Heaphy P14799
Attorney for Respondent,
Kenneth V. Miller
555 Grand Plaza Place
220 Lyon Square, N.W.
Grand Rapids, MI 49503
(616) 458-4880

APPENDIX

No. 85-1521

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

J. JEROME PREVATTE, AND WACO FINANCIAL, INC., INDIVIDUALLY AND AS ALTER EGO OF WACO FINANCIAL, INC.,

Plaintiffs-Appellants,

v.

THE SECURITIES AND EXCHANGE COMMISSION; IT'S AGENTS AND EMPLOYEES; MORE SPECIFICALLY, JOHN SHAD; WILLIAM GOLDSBERRY; MARY WEISS; WILLIAM GAYNOR; FRANK ROTHING; MIKE LAUSH; JOHN KUHN; DAVID BROWN; AND UNASSOCIATED INDIVIDUAL KENNETH V. MILLER,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN.

(Filed April 2, 1986)

BEFORE: JONES and NELSON, Circuit Judges; and EDWARDS, Senior Circuit Judge.

PER CURIAM: Plaintiffs J. Jerome Prevatte and Waco Financial Inc. appeal the dismissal of their complaint against the Securities and Exchange Commission, its chairman, several SEC employees and a private attorney who formally represented WACO and Prevatte. They alleged that the defendants unlawfully disqualified them from engaging in the securities business in violation of the Constitution and the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961 *et seq.* (1982).

The district court dismissed the federal due process claims on *res judicata* grounds in light of this court's decision in *Securities and Exchange Commission v. WACO Financial Inc.*, 751 F.2d 831 (6th Cir. 1985) *cert. denied* 106 S.Ct. 65 (1985). The remaining federal claims were dismissed because the district court determined that the SEC enjoyed sovereign immunity and the individual defendants enjoyed absolute immunity from liability. Based on these determinations, the district court concluded that the pendent state claims must also be dismissed. We have reviewed the records and briefs submitted by the parties and agree with the district court's disposition of this case. Accordingly, we AFFIRM.

WACO FINANCIAL, INC. and J. Jerome, Prevatte,

Plaintiff,

v.

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. and Securities and Exchange Commission,

Defendants.

No. K81-73 CA4.

United States District Court,
W. D. Michigan, S. D.

April 24, 1981.

Securities dealer and its president sought to enjoin the implementation of a decision of the National Association of Securities Dealers censuring dealer and expelling it from its membership. The dealer's president was also censured and barred from association, as a financial prin-

cipal, with any NASD member. On plaintiffs' motion for a preliminary injunction, the District Court, Benjamin F. Gibson, J., held that the Securities and Exchange Commission was entitled to deny a stay pending SEC review of its decision, in that expulsion from NASD pending review did not constitute irreparable injury and the dealer's claims did not rise to the level of being clear and unambiguous constitutional violations, warranting dispensation with the doctrine of exhaustion of administrative remedies.

Motion denied and complaint dismissed.

Theodore H. Amshoff, Jr., Louisville, Ky., Robert D. Mollhagen, Kalamazoo, Mich., for plaintiff.

Andrew McR. Barnes, Washington, D. C., for NASD.

Michael K. Wolensky, Washington, D. C., Mary Weiss, Chicago, Ill., Robert C. Greene, U. S. Atty., Grand Rapids, Mich., for SEC.

OPINION

BENJAMIN F. GIBSON, District Judge.

This suit involves plaintiff WACO's status as a member of the National Association of Securities Dealers, Inc. (hereinafter 'NASD') and that of its president, plaintiff J. Jerome Prevatte as a registered financial principal. It is presently before this Court pursuant to plaintiff's motion for a preliminary injunction.

The relevant facts are simple. The timing of this suit is unique. Sometime in 1980, the NASD filed two complaints against plaintiffs for their alleged failure to comply with certain rules of that association. On November 24, 1980 the District 8 Business Conduct Committee issued its

findings of violations of those rules. As a result, plaintiff WACO was censured and expelled from its membership with the NASD. Plaintiff Prevatte was also censured and barred from association, as a financial principal, with any NASD member. In accordance with the applicable procedure, plaintiffs appealed those decisions to the NASD's Board of Governors. The penalties were stayed pending the outcome of that appeal. On March 19, 1981 the Board issued its opinion affirming the findings and penalties imposed by the District Committee.

From this point forward, the proceedings against plaintiffs are governed by the provisions of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a-78kk. Specifically, § 76e(d)(1) and § 78s(e)(1) provide the mechanics for appeal of a final decision of the self-regulating NASD to the appropriate regulatory agency (in this case, the Securities and Exchange Commission—hereinafter 'SEC').

The SEC is required to give the disciplined member a hearing on appeal but according to the 1975 amendments to the Act, that hearing may consist only of a review of the NASD's record along with an opportunity for interested parties to present reasons for the affirmance, modification or setting aside of the NASD's action. 15 U.S.C. § 78s(e)(1). Thereafter, review of the SEC's action may be had in the United States Court of Appeals. 15 U.S.C. § 78y. The 1975 amendments also changed the prior provisions of the Act with respect to the status of any NASD-imposed penalties pending review by the SEC. The statute now provides that the application for SEC review shall not operate as a stay unless the Commission decides to the contrary. 15 U.S.C. § 78s(d)(2).

On March 23, 1981, plaintiffs applied for review of the NASD's decision to the SEC. At the same time, plaintiffs requested a stay of the penalties imposed. Prior to any decision by the SEC on the request for a stay, plaintiffs brought suit in this Court for a temporary restraining order and preliminary injunction. They contend that the Act and the NASD rules constitute unconstitutional deprivations of due process of law in several respects.

The attack against the NASD rules centers around the absence of a statute of limitations, the lack of mechanisms, for discovery prior to the NASD hearings, the composition of the NASD panels, and prosecutorial involvement in selection of the panel and rendering of the Committee's decision. Plaintiff's further contend that their treatment at the hands of the NASD was arbitrary and capricious. The two aforementioned 1975 amendments to the Securities Exchange Act of 1934 are the focus of the balance of the plaintiffs' constitutional attack. They contend that the combined effect of 15 U.S.C. § 78s(e)(1) and § 78s(d)(2) subjecting them to NASD penalties prior to adjudication of their constitutional claims in the Court of Appeals is a fifth amendment violation of due process of law.

The threshold issue is whether this Court has subject matter jurisdiction to entertain plaintiffs' claims. They assert jurisdiction under 28 U.S.C. § 1331 and § 1337 (federal question); 28 U.S.C. § 2201 and § 2202 The Declaratory Judgment Act); 5 U.S.C. §§ 702, 705, 706 (The Administrative Procedures Act) and 15 U.S.C. § 78a et seq. (The Securities Exchange Act of 1934). Assuming that this Court does have jurisdiction, it must decide whether

to exercise it prior to any action by the SEC with respect to plaintiffs' appeal.

At the outset this Court notes a well established principle that the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, is not a grant of jurisdiction. The purpose of the Act was to enlarge the scope of remedies available in cases where the federal court has an independent substantive basis for jurisdiction. *King v. Sloane,* 545 F.2d 7 (6th Cir. 1976); *American Airlines, Inc. v. Louisville & Jefferson Co. Air Bd.,* 269 F.2d 811 (6th Cir. 1959); *Muskegon Piston Ring Co. v. Olsen,* 307 F.2d 85 (6th Cir. 1962), *cert. den.* 371 U.S. 952, 83 S.Ct. 508, 9 L.Ed.2d 500; *Stanley v. Avery,* 387 F.2d 637 (6th Cir. 1968), *cert. den.* 390 U.S. 1044, 88 S.Ct. 1641, 20 L.Ed.2d 304. Additionally, the Administrative Procedures Act is not an independent grant of jurisdiction. *Califano v. Sanders,* 430 U.S. 99, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977); *Allan v. Securities & Exchange Comm.,* 577 F.2d 388 (7th Cir. 1978).

Jurisdiction must then lie either under 28 U.S.C. §§ 1331, 1337 of the Securities Exchange Act of 1934. In light of the provisions of 28 U.S.C. § 78y for review in the Court of Appeals after final action by the SEC, the role of the district courts, if any, is not well defined. The indications are, however, that this Court may have subject matter jurisdiction under § 1331 or § 1337 of plaintiffs' constitutional claims unless Congress' intent to foreclose such an avenue of review is manifested by clear and convincing evidence within the Securities Exchange Act. *Califano v. Sanders,* 430 U.S. 99, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977). The Act has been found not to exhibit such a clear Congressional intent. *Wolf Corp. v. Securities & Exchange Comm.,*

317 F.2d 139 (D.C.Cir.1963); *First Jersey Securities, Inc. v. Bergen,* 605 F.2d 690 (3rd Cir. 1979). The question of whether to exercise such jurisdiction prior to review of the NASD's action by the SEC must yet be answered.

The *First Jersey Securities Court* held that the comprehensiveness of the scheme of the Act suggested that the district courts should apply the concept of exhaustion of administrative remedies prior to exercising any jurisdiction they may have. Accordingly, this Court must determine whether the situation presented by this case is sufficient to invoke an exception to the exhaustion requirement.

Two exceptions to that requirement have been recognized in cases involving the Securities Exchange Act—where the administrative process is clearly shown to be inadequate in preventing irreparable injury or where there has been or will be a clear and unambiguous statutory or constitutional violation. *First Jersey Securities, Inc. v. Bergen,* 605 F.2d 690 (3rd Cir. 1979); *Wolf Corp. v. Securities & Exchange Comm.,* 317 F.2d 139 (D.C.Cir.1963); *OKC Corp. v. Williams,* 461 F.Supp. 540 (D.C.Tex.1978). *See also School District of City of Saginaw, Mich. v. United States, Dept. of HEW,* 431 F.Supp. 147 (D.C. Mich. 1977) (Title VI), *Boise Cascade Corp. v. Federal Trade Comm.,* 498 F.Supp. 772 (D.C.Del.1980) (antitrust). This Court does not find that, under the present posture of this action, plaintiffs are able to hurdle either of those exceptions.

The mere allegation of a constitutional violation is insufficient to constitute irreparable harm. *Boise Cascade Corp. v. Federal Trade Comm.,* 498 F.Supp. 772 (D.C.Del. 1980). Those claims can be reviewed in the

Court of Appeals after exhaustion of the administrative process. Cost incurred by plaintiffs due to any delay in review has been held not to constitute irreparable injury. *First Jersey Securities, Inc. v. Bergen*, 605 F.2d 690 (3rd Cir. 1979). *See also Sampson v. Murray*, 415 U.S. 61, 94 S.Ct. 937, 39 L.Ed.2d 166 (1974). Expulsion from the NASD pending review of those claims has been held not to constitute irreparable injury in light of the broad discretion given to the SEC to protect the interests of the investing public. *Associated Securities Corp. v. Securities & Exchange Comm.*, 283 F.2d 773 (10th Cir. 1960).

The ultimate question is whether plaintiffs' claims rise to the level of being clear and unambiguous constitutional violations. This Court cannot say that they do. In general, the Securities Exchange Act and the NASD system of self-regulation have repeatedly withstood constitutional attack. *R. H. Johnson & Co. v. Securities & Exchange Comm.*, 198 F.2d 690 (2nd Cir. 1952), *cert. den.* 344 U.S. 855, 73 S.Ct. 94, 97 L.Ed. 664; *Todd & Co. v. Securities & Exchange Comm.*, 557 F.2d 1008 (3rd Cir. 1977); *First Jersey Securities, Inc. v. Bergen*, 605 F.2d 690 (3rd Cir. 1979) (claim of bias); *Nassau Securities Service v. Securities & Exchange Comm.*, 348 F.2d 133 (2nd Cir. 1965) (composition of NASD tribunals); *Allan v. Securities & Exchange Comm.*, 577 F.2d 388 (7th Cir. 1978) (SEC's discretion to issue stay pending appeal). This Court likewise does not believe that the plaintiffs' claims as to the absence of discovery mechanisms or the alleged lack of a statute of limitations rise to the level of clear and unambiguous constitutional violations. The concept of a constitutional right to discovery in judicial or quasi-judicial proceedings has been rejected. *Nat'l Lab. Rel.*

Bd. v. Interboro Contractors, Inc., 432 F.2d 854 (2nd Cir. 1970). *See also Sloan v. New York Stock Exchange*, 489 F.2d 1, n.1 (2nd Cir. 1973). This Court has not been directed to any authority for the proposition that one has a constitutional right to a statute of limitations.

Since the inception of this suit, the real thrust of plaintiffs' claim has been against the impact of the 1975 amendments to the Act. If the SEC refuses plaintiffs' request for a stay, they will be subjected to expulsion from the NASD until such time as the vindication of their alleged constitutional claims regarding bias, prosecutorial involvement, absence of discovery and lack of a statute of limitations before the Commission or in the Court of Appeals. Plaintiffs contend that they have a constitutional right to be free of sanctions or penalties prior to the ultimate adjudication of their claims. The Supreme Court does not agree and has declined to recognize such a right even in the face of irreparable injury. *Yakus v. United States*, 321 U.S. 414, 64 S.Ct. 660, 88 L.Ed. 834 (1944). The Seventh Circuit has specifically rejected a claim that leaving the question of the propriety of a stay to the SEC's discretion under the Act is a deprivation of due process. *Allan v. Securities & Exchange Comm.*, 577 F.2d 388 (1978).

Consequently, this Court does not find this case to be in such a posture as to require an exception to the exhaustion rule. It is entirely possible that the SEC will issue a stay, thus rendering plaintiffs' claims moot. It is also possible that the SEC will allow more than a review merely on the record in plaintiffs' case pending before the Commission. The 1975 amendment to § 78s(e)(1)

does not preclude a *de novo* review. In light of these possibilities and the absence of irreparable injury or a clear constitutional violation, this appears to be a case where there should be exhaustion of administrative remedies.

Accordingly, plaintiffs' motion for a preliminary injunction is denied and the complaint is dismissed.

IT IS SO ORDERED.

Rule 17. Considerations governing review on certiorari

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court,

or has decided a federal question in a way in conflict with applicable decisions of this Court.

.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of of[1] the United States Court of Appeals for the Federal Circuit, the United States Court of Military Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari.

(As amended July 5, 1984, eff. Aug. 1, 1984.)

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Rule 21. The petition for certiorari

.1. The petition for writ of certiorari shall contain, in the order here indicated:

(a) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of the questions should be short and concise and should not be argumentative or repetitious. The statement of a question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition or fairly included therein will be considered by the Court.

(b) A list of all parties to the proceeding in the court whose judgment is sought to be reviewed, except where the caption of the case in this Court contains the names of all parties. This listing may be done in a footnote. See Rule 28.1.

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[1] So in Original.

(c) A table of contents and table of authorities, if required by Rule 33.5.

(d) A reference to the official and unofficial reports of any opinions delivered in the courts or administrative agency below.

(e) A concise statement of the grounds on which the jurisdiction of this Court is invoked showing:

(i) The date of the judgment or decree sought to be reviewed, and the time of its entry;

(ii) The date of any order respecting a rehearing, and the date and terms of any order granting an extension of time within which to petition for certiorari; and

(iii) Where a cross-petition for writ of certiorari is filed under Rule 19.5, reliance upon that Rule shall be expressly noted and the cross-petition shall state the date of receipt of the petition for certiorari in connection with which the cross-petition is filed.

(iv) The statutory provision believed to confer on this Court jurisdiction to review the judgment or decree in question by writ of certiorari.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations which the case involves, setting them out verbatim, and giving the appropriate citation therefor. If the provisions involved are lengthy, their citation alone will suffice at this point, and their pertinent text then shall be set forth in the appendix referred to in subparagraph 1(k) of this Rule.

(g) A *concise* statement of the case containing the facts material to the consideration of the questions presented.

(h) If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings, both in the court of first instance and in the appellate court, at which the federal

questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by the court; such pertinent quotation of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (*e.g.*, ruling on exception, portion of court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on writ of certiorari.

Where the portions of the record relied upon under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph 1(k) of this Rule.

(i) If review of the judgment of a federal court is sought, the statement of the case shall also show the basis for federal jurisdiction in the court of first instance.

(j) A direct and concise argument amplifying the reasons relied on for the allowance of the writ. See Rule 17.

(k) An appendix containing, in the following order:

(i) Copies of any opinions, orders, findings of fact, and conclusions of law, whether written or oral (if recorded and transcribed), delivered upon the rendering of the judgment or decree by the court whose decision is sought to be reviewed.

(ii) Copies of any other such opinions, orders, findings of fact, and conclusions of law rendered by courts or administrative agencies in the case, and, if reference thereto is necessary to ascertain the grounds of the judgment or decree, of those in companion cases. Each of these documents shall include the caption showing the name of the issuing court or agency

and the title and number of the case, and the date of its entry.

(iii) A copy of the judgment or decree sought to be reviewed and any order on rehearing, including in each the caption showing the name of the issuing court or agency, the title and number of the case, and the date of entry of the judgment, decree, or order on rehearing.

(iv) Any other appended materials.

If what is required by this paragraph or by subparagraphs 1(f) and (h) of this Rule, to be included in the petition is voluminous, it may, if more convenient, be separately presented.

.2. The petition for writ of certiorari shall be produced in conformity with Rule 33. The Clerk shall not accept any petition for writ of certiorari that does not comply with this Rule and with Rule 33, except that a party proceeding *in forma pauperis* may proceed in the manner provided in Rule 46.

.3. All contentions in support of a petition for writ of certiorari shall be set forth in the body of the petition, as provided in subparagraph 1(j) of this Rule. No separate brief in support of a petition for a writ of certiorari will be received, and the Clerk will refuse to file any petition for a writ of certiorari to which is annexed or appended any supporting brief.

.4. The petition for writ of certiorari shall be as short as possible, but may not exceed 30 pages, excluding the subject index, table of authorities, any verbatim quotations required by subparagraph 1(f) of this Rule, and the appendix.

.5. The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition.

(As amended Oct. 21, 1980, eff. Nov. 21, 1980.)

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Rule 46. Proceedings in forma pauperis

.1. A party desiring to proceed in this Court *in forma pauperis* shall file a motion for leave so to proceed, together with his affidavit in the form prescribed in Fed. Rules App.Proc., Form 4 (as adapted, if the party is seeking a writ of certiorari), setting forth with particularity facts showing that he comes within the statutory requirements. See 28 U.S.C. § 1915. However, the affidavit need not state the issues to be presented, and if the district court or the court of appeals has appointed counsel under the Criminal Justice Act of 1964, as amended, the party need not file an affidavit. See 18 U.S.C. § 3006A(d)(6). The motion shall also state whether or not leave to proceed *in forma pauperis* was sought in any court below and, if so, whether leave was granted.

.2. With the motion, and affidavit if required there shall be filed the appropriate substantive document—jurisdictional statement, petition for writ of certiorari, or motion for leave to file, as the case may be—which shall comply in every respect with the Rules governing the same,

except that it shall be sufficient to file a single copy thereof.

.3. All papers and documents presented under this Rule shall be clearly legible and should, whenever possible, comply with Rule 39. While making due allowance for any case presented under this Rule by a person appearing *pro se,* the Clerk will refuse to receive any document sought to be filed that does not comply with the substance of these Rules, or when it appears that the document is obviously and jurisdictionally out of time.

.4. When the papers required by paragraphs .1 and .2 of this Rule are presented to the Clerk, accompanied by proof of service as prescribed by Rule 28, he, without payment of any docket or other fees, will file them, and place the case on the docket.

.5. The appellee or respondent in a case *in forma pauperis* may respond in the same manner and within the same time as in any other case of the same nature, except that the filing of a single response, typewritten or otherwise duplicated, with proof of service as required by Rule 28, will suffice whenever petitioner or appellant has filed typewritten papers. The appellee or respondent, in such response or in a separate document filed earlier, may challenge the grounds for the motion to proceed *in forma pauperis.*

.6. Whenever the Court appoints a member of the Bar to serve as counsel for an indigent party in a case set for oral argument, the briefs prepared by such counsel, unless he requests otherwise, will be printed under the supervision of the Clerk. The Clerk also will reimburse

such counsel for necessary travel expenses to Washington, D.C., and return, in connection with the argument.

.7. Where this Court has granted certiorari or noted or postponed probable jurisdiction in a federal case involving the validity of a federal or state criminal judgment, and where the defendant in the original criminal proceeding is financially unable to obtain adequate representation or to meet the necessary expenses in this Court, the Court will appoint counsel who may be compensated, and whose necessary expenses may be repaid, to the extent provided by the Criminal Justice Act of 1964, as amended (18 U.S.C. § 3006A).

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Rule 49. Interest and damages

.1. Unless otherwise provided by law, if a judgment for money in a civil case is affrmed, whatever interest is allowed by law shall be payable from the date the judgment below was entered. If a judgment is modified or reversed with a direction that a judgment for money be entered below, the mandate shall contain instructions with respect to allowance of interest. Interest will be allowed at the same rate that similar judgments bear interest in the courts of the State where the judgment was entered or was directed to be entered.

.2. When an appeal or petition for writ of certiorari is frivolous, the Court may award the appellee or the respondent appropriate damages.

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§ 27A.901 State Bar of Michigan; body corporate; membership; right to practice law.] SEC. 901. The state bar of Michigan is a public body corporate, the membership of which consists of all persons who are now and hereafter licensed to practice law in this state. The members of the state bar of Michigan are officers of the courts of this state, and have the exclusive right to designate themselves as "attorneys and counselors," or "attorneys at law," or "lawyers." No person is authorized to practice law in this state unless he complies with the requirements of the supreme court with regard thereto. (MCL § 600.901.)

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§ 1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to

which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy. June 25, 1948, c. 646, 62 Stat. 928.